IN THE HIGH COURT OF PUNJAB & HAYANA AT CHANDIGARH

Date of decision : November 7, 2006.

**Criminal Appeal No. 152-DBA of 1997**

State of Punjab Vs. Karamjit Singh son of Chanan Singh, son of Lehna Singh ;

2) Ms. Surjit Kaur, wife of Chanan Singh,

Both residents of Village Bharpurgarh, District Fatehgarh Sahib.

Present: Mr. K.S. Boparai, Additional Advocate General, Punjab, for the appellant.

Mr. Gurcharan Dass, Advocate, for the respondents.

**Criminal Appeal No. 161-SB of 1996**

Karamjit Singh Vs. State of Punjab.

Present: Mr. Gurcharan Dass, Advocate, for the appellant.

Mr. K.S. Boparai, Additional Advocate General, Punjab.

**Corum: Hon'ble Mr. Justice Virender Singh**
**Hon'ble Mr. Justice A.N.Jindal**

**Judgment**

Vide this judgment, we intend to dispose of the aforesaid two appeals as both arise out of one and the same judgment of learned

Additional Sessions Judge, Fatehgarh Sahib dated February 5, 1996, vide which Surjit Kaur respondent has been acquitted for the offence punishable under Section 302/34 of the Indian Penal Code and her son Karamjit Singh respondent, who was charged along with her for Section 302/34 of the Indian Penal Code also stands acquitted of the said charge and instead convicted under Section 306 of the Indian Penal Code. He has been sentenced to undergo RI for 4 ½ years and to pay a fine of Rs.200/-, in default of payment of which to suffer further RI for one month.

The State of Punjab has preferred Criminal Appeal No. 152-DBA of 1997 against acquittal of both the accused whereas Karamjit Singh has filed a separate appeal No. 161-SB of 1996 against his conviction recorded under Section 306 of the Indian Penal Code.

Bhupinder Kaur daughter of Sajjan Singh(PW5) and real sister of Ravinder Kaur (PW3) is the deceased in this case. The present case was registered on the statement (Exhibit PE) of Ravinder Kaur recorded on 1.5.1994 made before SI Malkiat Singh ( PW6) of Police Station Amloh near a petrol pump falling within the area of Bachal Thua at 10-30 AM.In fact SI Malkiat Singh had already received a wireless message from Rajendra Hospital, Patiala about the admission of Bhupinder Kaur on account of burn injuries and he had already proceeded for the hospital when Ravinder Kaur met him and made her statement. It is alleged by Ravinder Kaur that her father Sajjan Singh was having five daughters and no son.

She was married to Kuldip Singh and her younger sister Bhupinder Kaur ( since deceased) was married to Karamjit Singh accused in village Bharpur Garh about 6/7 years ago. It is then alleged that Bhupinder Kaur was being harassed by Karamjit Singh and Surjit Kaur on account of bringing inadequate dowry and both of them were demanding share in the land of her father as she had no brother. About one year prior to the present occurrence, both the accused had tried to administer poison to Bhupinder Kaur for which she was treated in the hospital at Khanna. Thereafter a panchayat was convened in which Karamjit Singh, her husband had apologised and brought her back. On 30-4-1994 Ravinder Kaur had gone to meet her sister in her matrimonial home where Bhupinder Kaur disclosed to her that her husband and mother-in-law had quarrelled with her for not bringing money from her house and for not transferring the land. She was suspecting that both of them would kill her during night time. It is then alleged that Ravinder Kaur disclosed this fact to her father-in-law Sadhu Singh ( PW4) and at about 11-00 p.m. they went to inquire about her sister in her matrimonial home where she found her weeping and saying that she should not be beaten and she would go to her parents' house. It is further alleged that in the meantime Bhupinder Kaur was caught hold of by Surjit Kaur and Karamjit Singh lit match stick and put her on fire. Since they had already sprinkled kerosene oil upon her, she received serious burn injuries. She ran in the courtyard in order to save herself. Karamjit Singh was saying

that she was given punishment as she had failed to get the land transferred. It is then alleged by Ravinder Kaur that she had witnessed the whole occurrence and in the light of the flames she had identified both the accused. She came running to her matrimonial home and informed Sadhu Singh, her father-in-law. Thereafter both of them went to the spot and saw Bhupinder Kaur lying in the courtyard fighting for life. She demanded water and disclosed to Ravinder Kaur and Sadhu Singh that Karamjit Singh and Surjit Kaur accused had tortured her after sprinkling kerosene upon her. Bhupinder Kaur was then taken to the hospital in a Maruti Car by Sadhu Singh and Karamjit Singh. Ravinder Kaur came to village Naraingarh to inform about the incident to her father. Later on Bhupinder Kaur succumbed to her burn injuries. Thereafter Ravinder Kaur, her father-in-law Sadhu Singh and Surjit Singh son of Ala Singh left for the police station to report the matter when SI Malkiat Singh met them near the petrol pump at 10-20 A.M. and after recording the statement of Ravinder Kaur made his endorsement ( Exhibit PE/1), on the basis of which formal FIR (Exhibit PE/2) was recorded at 10-30 a.m.

SI Malkiat Singh reached the hospital, prepared inquest report ( Exhibit PB) of the dead body and sent it for postmortem examination. He also recorded the statements of the witnesses present at the spot and after reaching the place of occurrence, prepared rough site-plan ( Exhibit PE/4), took into possession the burnt clothes vide memo.-Exhibit PF, which was

attested by the witnesses present there. He also took into possession empty bottle of kerosene oil. Surjit Kaur respondent was arrested on 5-5-1994 whereas Karamjit Singh respondent was arrested on 7.5.1994 as he had surrendered before the Court. After completion of investigational process, both the accused were challaned. They were charged under Section 302/34 of the Indian Penal Code.

In order to substantiate the charge against both the accused, the prosecution has examined the following witnesses:

PW1-Dr. Harish Tuli, who had conducted autopsy on the dead body of Bhupinder Kaur on 1.5.1994 and found that there were superficial burns present all over the body except the soles of the feet. Lungs were congested. According to him, the cause of death was due to the burns and the probable time that elapsed between burns and death was about 2 ½ to 3 hours and between death and postmortem within 24 hours. He had proved the post mortem report (Exhibit PA).

PW2 Dr. Neel Kamal had produced the Bed Head Ticket of Bhupinder Kaur ( deceased) in which it was mentioned that she was brought in the hospital on 1.5.1994 as a case of 99% burns and she was in the state of cardio respiratory collapse. She was resuscitated in ward no. 7 and was subsequently declared dead at 3-40 AM. This witness had further stated that she was unconscious at the time of her admission. Blood pressure and pulse were un-recordable.

PW3 Ravidner Kaur is the real sister of Bhupinder Kaur ( deceased). She has reiterated her case as projected in her statement ( Exhibit PE), which is the basis of recording of the FIR.

PW4 Sadhu Singh is father-in-law of Ravidner Kaur (PW3), who had also stated that both the accused were harassing Bhupidner Kaur. He also stated that since Sajjan Singh had five daughters and no male issue, both the accused were pressurising Bhupinder Kaur to claim share in her father's land as he was not having any male issue. He also talked about the earlier occurrence in which Bhupinder Kaur was administered poison by both the accused. He had further stated that on 30-4-1994 his daughter-in-law/Ravinder Kaur had disclosed to him that her sister Bhupinder Kaur was being maltreated on account of bringing inadequate dowry and were demanding share in the agricultural land. As per his substantive statement, after Ravinder Kaur disclosed to him that her sister had been set ablaze, he along with Ravinder Kaur had gone to the house of the deceased and saw her in flames and that both the accused were present by the side of Bhupinder Kaur in the house. He then stated that they made an attempt to extinguish the fire and then asked Karamjit Singh accused to arrange for conveyance. Bhupinder Kaur was subsequently brought to Rajendra Hospital, Patiala on the conveyance brought by Karamjit Singh accused. According to this witness, in the way Bhupinder Kaur was addressing to her sister as to why he (her husband) had put her on fire for no fault of her.

PW5 Sajjan Singh is father of Bhupinder Kaur deceased. He also reiterates the case of the prosecution.

PW6 SI Malkiat Singh is the Investigating Officer, whose investigation has already been alluded to in the preceding paras.

The plea taken by both the accused is of false implication. In his statement under section 313 of the Code of Criminal Procedure Karamjit Singh accused has stated as follows:

> "I am innocent. I have been falsely implicated in this case. Bhupinder Kaur deceased was suffering from mental ailment much prior to the incident. I used to lodge protest to my father in law Sajjan Singh that an insane girl had been married with me. Whenever Bhupinder Kaur suffered from mental depression, I used to tell about it to my father in law who had been assuring me that he will help me in getting her treated. During the days of occurrence Smt. Bhupinder Kaur was suffering from acute mental depression. I had earlier been getting her treated from various doctors including Dr. Gurmeet Singh Head of Psychiatric Department. On the night intervening 30.4.1994/1.5.1994 I was not present in the house and had gone to the fields. Smt. Bhupinder Kaur while under the fit of depression put herself on fire while in the bed and committed suicide. I was informed by the neighbours about it in the fields and returned to the house and removed the injured to the hospital. I got her admitted in Rajindera Hospital, Patiala at about 3/10 A.M. on 1.5.1994 and she was declared dead at 3.40 a.m. I sent intimation to my in-laws, Ravinder Kaur

my sister in law and other family members felt sore on account of the death of Bhupinder Kaur against me. I had earlier strained relations with Sadhu Singh father in law of Ravinder Kaur who was not on visiting terms to our house at all. I have been falsely implicated on suspicion in the case in order to grab my landed property. My mother was also away to the house of my sister on that day."

After appreciating the entire evidence, the learned trial Court has acquitted Surjit Kaur as stated herein above and convicted Karamjit Singh under Section 306 IPC only.

We have heard Mr. Boparai, learned Additional Advocate General representing the State of Punjab and Mr. Gurcharan Dass Advocate representing both the accused. With their assistance we have gone through the entire record minutely.

Mr. Boparai submits that the learned trial Court has wrongly acquitted both the accused for the charge of Section 302/34 IPC, whereas there was no reason to disbelieve the oral dying declaration made by the deceased before her real sister Ravinder Kaur and Sadhu Singh ( father-in-law of Ravinder Kaur), who were present in the house of the deceased and had also accompanied the deceased to Rajendra Hospital. The learned State counsel then submits that even otherwise statement of Ravinder Kaur, who happens to be an eye-witness to the main occurrence is believable as she on the night intervening 30-4-1994/1-5-1994 at about 11-00/12-00(mid-night) had gone to the house of her sister to inquire about her well-being as her

sister was dejected on account of harassment meted out to her at the hands of both the accused. She categorically stated in her subsequent statement that when she reached near the outer boundary of the house, she saw Surjit Kaur accused catching hold of Bhupinder Kaur and her son-Karamjit Singh putting her on fire with the help of burning match stick. According to the learned State counsel, the trial Court has not appreciated the prosecution evidence in the right perspective, which has caused prejudice and both the accused deserve to be convicted under Section 302/34 IPC.

Mr. Gurcharan Dass while controverting the submissions made by Mr. Boparai vehemently contends that the prosecution case as projected by Ravinder Kaur with regard to the main charge of Section 302 IPC is not at all appealing and, therefore, the learned trial Court has rightly rejected the case of the prosecution on the said charge qua both the accused. He then contends that even otherwise the marriage was about 7 years old and the allegation of demand of dowry stands no-where. According to the learned counsel, Ravinder Kaur(PW3) during trial had made an improvement to bring the prosecution case within the mischief of dowry demand by introducing a new fact of demand of Rs. one lac. but she was confronted on that aspect. The learned counsel has also drawn our attention to the document-Exhibit DA, which has also been taken into consideration by the learned trial Court while acquitting both the accused of the charge of murder. He draws our attention to the relevant paras of the judgment, and

contends that there is no perversity in the view taken by the trial Court which would call for interference of this Court.

First of all, we are dealing with the State appeal.

In order to prove the main charge, the prosecution case rests upon the testimony of Ravinder Kaur ( PW3), real sister of the deceased and Sadhu Singh(PW4), father-in-law of Ravinder Kaur. No doubt, Ravinder Kaur was also residing in village Bharpur Garh and might have been meeting her sister quite often, but her statement to the effect that on the night intervening 30-4-1994/1-5-1994 at about 12-00 ( midnight) when she had gone to the house of her sister, she saw both the accused putting her on fire, is not appealing to judicial conscience which is an embodiment of reasoning. An attempt made by her to explain her presence at the house of her sister at that odd hour is that she was thinking all the times about the facts disclosed to her by her sister as she was dejected. But we are not at all convinced with the said explanation.

While agreeing with the observation of the learned trial Court made in para 39 of the impugned judgment discarding the oral dying declaration made by the deceased, we also doubt it yet from another angle. Once the very case set up by Ravinder Kaur, the star witness to the main occurrence is doubtful for the reasons mentioned hereinabove, the oral dying declaration as projected has to be seen with an eye of suspicion especially when both the witnesses are interested in the success of the

prosecution case.

After rescanning the entire evidence, we are not inclined to take a contrary view from the one taken by the learned trial Court while rejecting the oral dying declaration.

We are also not inclined to believe the earlier incident of administering poison to the deceased as no documentary evidence was placed on record in this regard despite the fact that it has come in evidence that Bhupinder Kaur was treated in the hospital.

The document Exhibit DA, on which the prosecution itself had relied upon as it formed part of the challan presented under Section 173 of the Code of Criminal Procedure was a writing ( compromise-deed) between Karamjit Singh and his wife Bhupinder Kaur ( deceased). As per the contents of Exhibit DA, marriage of the deceased was solemnized with Karamjit Singh accused 7/8 years ago and she was residing with her parents on account of marital discord between them. The learned trial Court while considering many infirmities in the case of the prosecution had also taken into account Exhibit DA. We have also gone through the same. According to Mr. Gurcharan Dass, rather it supports the plea of the husband where he says that his wife had some mental problem for which he was getting her checked up.

No doubt, while deciding an appeal against acquittal power of the appellate court is not less than while hearing the appeals against

conviction as in both type of appeals, the power is to review the entire evidence but one significant difference is that an order of acquittal should not be disturbed by an appellate court where the trial Court judgment is based on evidence and the view taken is plausible and reasonable. It is well settled that appellate court will also bear in mind that there is presumption of innocence in favour of the accused and the accused is entitled to get the benefit of doubt. For disturbing the judgment of acquittal, the appellate court should assign reasons while differing with the decision of the trial court. In the case in hand, we do not find any reason much less compelling or substantial for disturbing the view already taken by learned trial Court while acquitting both the accused for the charge of Section 302/34 IPC. Therefore, having found no demonstrable perversity in the impugned judgment, we hereby dismiss the State appeal and confirm the acquittal of both the accused for the charge of Section 302/34 IPC.

Let us now advert to Criminal Appeal No. 161-SB of 1996 filed by Karamjit Singh against his conviction under Section 306 IPC.

Mr. Gurcharan Dass has not joined any issue on merits of this appeal and has confined his arguments with regard to quantum of sentence only stating that out of the total substantive sentence of 4 ½ years as awarded by the learned trial Court Karamjit Singh appellant has already undergone about two years as he remained in custody throughout the trial after he was arrested in May 1994 i.e. a few days after registration of the

case and thereafter also he remained in custody for about a month after suffering conviction. This fact is not controverted by the learned State counsel.

Mr. Gurcharan Dass then contends that at the time of conviction, the age of Surjit Kaur ( since acquitted) was 72 years and she was suffering from many diseases including heart problem, for which certain documents were produced before the trial Court. She is now aged 82 years and is practically confined to bed. The learned trial Court while considering all the factors had sentenced the appellant for 4 ½ years and since the appellant has already undergone the agony of another ten years and has to look after his aged ailing mother, he deserves a lenient/sympathetic view with regard to reduction in quantum of sentence.

In support of his contentions, the learned counsel has placed reliance upon a judgment of Hon'ble Apex Court rendered in **Mohd Hoshan and another Vs. State of Andhra Pradesh, 2002 AIR SCW 3795**, wherein their Lordships while maintaining conviction of the husband and mother-in-law under Sections 306 and 498-A IPC modified the sentence of imprisonment for the period already undergone, considering the fact that both the accused remained in custody for some time and the incident was old one. In the aforesaid case, the mother of the husband , whose conviction was also maintained was of the age of 60 years.

The prayer is opposed by the learned State counsel.

Although Mr. Gurcharan Dass has not assailed the impugned judgment on merits, yet being the Court of first appeal, we have re-appreciated the entire evidence and are of the view that the conviction of appellant Karamjit Singh as already recorded by the trial Court under section 306 IPC deserves to be maintained. Ordered accordingly.

However, we find substance in the arguments advanced by the learned counsel with regard to reduction in the quantum of sentence.

Keeping in view the totality of facts and circumstance of the case, ends of justice would be adequately met if the substantive sentence of 4 ½ years as awarded by the learned trial Court is reduced to the period already undergone by Karamjit Singh appellant. However, the sentence of fine shall remain as it is. Ordered accordingly.

The net result which now surfaces is that Criminal Appeal No. 152-DBA of 1997 filed by the State of Punjab is dismissed whereas Criminal Appeal No. 161-SB of 1996 filed by Karamjit Singh also stands dismissed on merits except with the modification in the quantum of sentence as indicated herein above.

**( Virender Singh )**
**Judge**

**( A.N. Jindal )**
**Judge**

November 7, 2006.
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